

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

FRANKLIN C. SMITH,)	
)	
Plaintiff,)	
vs.)	NO. CIV-14-1374-HE
)	
RAE HOWELL <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

Plaintiff, appearing *pro se* and *in forma pauperis*, filed this action while confined in the Payne County Jail in Stillwater, Oklahoma. He sued a nurse and physician at Stillwater Medical Center, a Stillwater police officer, an assistant district attorney for Payne County, and a state court district judge, asserting various claims under both federal and state law. Pursuant to 28 U.S.C. § 636(b)(1)(B), (C), the matter was referred for initial proceedings to Magistrate Judge Shon Erwin, who conducted the required screening under 28 U.S.C. § 1915(e)(2)(B)(ii) for *in forma pauperis* cases. He issued a Report and Recommendation recommending that all but plaintiff's Americans with Disabilities Act ("ADA") claim against defendant Casteel be dismissed with prejudice, that the ADA claim be dismissed but with leave to amend, and that the court decline to exercise supplemental jurisdiction over the state law claims.

The court dismissed with prejudice all plaintiff's federal claims asserted against all defendants in his original complaint except for his ADA claim against defendant Casteel. Plaintiff was granted leave to file by August 28, 2015, an amended complaint asserting an

ADA claim only against defendant Casteel. He was advised that if he could state a valid claim under the ADA against defendant Casteel, the court would exercise its supplemental jurisdiction over plaintiff's state law negligence/medical malpractice claims against defendants Howell and Moore. Otherwise, it would decline to exercise jurisdiction over the state law claims and they would be dismissed without prejudice.

Magistrate Judge Irwin has issued another Report and Recommendation in which he states that plaintiff's deadline for amending his ADA claim has passed and plaintiff has failed to file an amended complaint or any document related to his ADA claim. The magistrate judge recommends that plaintiff's ADA claim against defendant Casteel be dismissed with prejudice and that the court decline to exercise supplemental jurisdiction over plaintiff's state law claims. The magistrate judge also recommends that the court deny as being moot plaintiff's motion asking the court to disregard defendant Howell's motion to dismiss, Doc. #53, and his supplement to memorandum of law, Doc. #58.


Plaintiff failed to object to the Report and Recommendation and thereby waived his right to appellate review of the factual and legal issues it addressed.¹ United States v. One Parcel of Real Property, 73 F.3d 1057, 1059-60 (10th Cir. 1996); *see* 28 U.S.C. §636(b)(1)(C). Accordingly, the court **ADOPTS** Magistrate Judge Irwin's Report and Recommendation. Plaintiff's ADA claim against defendant Casteel is dismissed with

¹*The court recognizes that the copy of the Report and Recommendation that was mailed to plaintiff was returned as "not deliverable as addressed." Doc. #62. However, pro se litigants are required by the local rules to notify the court when their mailing addresses change. LCvR5.4(a). And "[p]apers sent by the court will be deemed delivered if sent to the last known address given to the court." Id.*

prejudice. The court declines to exercise supplemental jurisdiction over plaintiff's state law claims, which are dismissed without prejudice. *See* 28 U.S.C. § 1367(c)(3). Plaintiff's two motions, Doc. Nos. 53, 58, are **DENIED** as being **MOOT**.

IT IS SO ORDERED.

Dated this 28th day of September, 2015.



JOE HEATON
UNITED STATES DISTRICT JUDGE